

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

RONALD J. HOLLEMAN	§	
v.	§	CIVIL ACTION NO. 9:07cv294
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON PETITIONER’S MOTIONS FOR RELIEF FROM JUDGMENT

The Petitioner Ronald Holleman filed this habeas corpus petition challenging the legality of prison disciplinary action taken against him. The case was referred to the United States Magistrate Judge, who issued a Report on December 9, 2008, recommending that the petition be dismissed. Holleman received a copy of this Report on December 22, 2008, but when no objections were received within the statutory time period, the petition was dismissed on January 23, 2009.

On January 26, 2009, Holleman’s objections were received. The District Court construed these objections as a motion to alter or amend the judgment, and denied this motion on February 11, 2009. See Alexander v. Milligan, 201 Fed.Appx. 228 (5th Cir., Sept. 27, 2006) (unpublished) (available on WESTLAW at 2006 WL 2827917), citing Mangieri v. Clifton, 29 F.3d 1012, 1015 n.5 (5th Cir. 1994).

On February 24, 2009, Holleman filed a document which he styled as a “memorandum in support of motion for relief from judgment.” This memorandum argued that his original objections had been timely and should have been considered, and that any delays were not his fault.

On March 2, 2009, the Magistrate Judge issued a Report construing Holleman’s memorandum, docket no. 24, as a motion for relief from judgment and recommending that this motion be denied. The Magistrate Judge noted that the objections to which Holleman referred were the ones which the District Court had construed as a motion to alter or amend the judgment. The

District Court concluded that these objections lacked merit, and the Magistrate Judge stated that this finding was true whether Holleman's pleading was construed as objections to the Magistrate Judge's Report or as a motion to alter or amend the judgment. The Magistrate Judge therefore recommended that Holleman's second motion for relief from judgment be denied.

Holleman filed objections to this Report on March 26, 2009. In these objections, Holleman says that because his first set of objections was mailed in a timely manner, the District Court was required to make a *de novo* determination of them. He says that had there been a *de novo* review as required, the District Court would have ruled in his favor.

In making this claim, however, Holleman overlooks the fact that his original objections were considered by the District Court, albeit in the context of construing them as a motion to alter or amend the judgment. While it is unfortunate that Holleman's objections were delayed and were not received by the Court prior to the entry of final judgment, Holleman has not suffered any harm as a result of this circumstance; the Court carefully reviewed his objections when they were received and determined that these objections lacked merit. As the Magistrate Judge said, this finding of lack of merit would have been the same whether the objections were construed as a motion to alter or amend the judgment or given a *de novo* review. Holleman's claim is without merit.

The Court has conducted a careful *de novo* review of the pleadings and records in this case, the Report of the Magistrate Judge, and the Plaintiff's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge (docket no. 25) is hereby adopted as the opinion of the District Court. It is further

ORDERED that the Plaintiff's motion for relief from judgment (docket no. 24) be and hereby is DENIED. So ORDERED and SIGNED this 30 day of March, 2009.



Ron Clark, United States District Judge